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Responsive to Office Action mailed on 31 October 2006

### REMARKS AND ARGUMENTS

#### **Amendment to the claims**

Claims 4 and 20 have been cancelled, leaving Claims 19 and 21-25 pending.

Claim 19 has been amended to recite specific transformations. The remaining claims have been amended to conform their recitations to the amended recitation of Claim 19.

#### **Claim Rejections Under 35 U.S.C. § 102 over Deagan**

In the Office Action, Claims 4 and 19-24 were rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,566,398 to Deagan ("Deagan" hereinafter). The rejections of Claims 4 and 20 have been obviated by their cancellation in this Reply. The rejections of the remaining claims are traversed on the ground that the cited reference fails to anticipate them.

In Claim 19, the claimed changing aid comprises a mat to which an effect generating mechanism is joined. The effect generating mechanism is adapted to transform a portion of the article from a first condition to a second condition by changing a size, a thickness, an absorbency, a breathability, a flexibility, a rigidity, an elasticity, or a tackiness of the portion of the article, or by making a connection between the portion of the article and another portion of the article, or by activating or deactivating an adhesive.

It was alleged in the Office Action that when Deagan's *helmet removal device 10* is activated, it moves the *helmet 12* and thereby transforms the *helmet 12*. However, this allegation improperly confuses movement and transformation. The *bladder 24* merely moves the *helmet 12*; it does not transform the *helmet 12*. Specifically, the movement of Deagan's *helmet 12* by the *bladder 24* is clearly not one of the recited transformations.

In response to the explanation in a previous Reply that movement of Deagan's *helmet 12* does not constitute a transformation of the *helmet 12*, it was alleged in the Office Action that "the present specification does not provide a clear and precise definition of 'transformation'". However, in direct contradiction to this allegation, the specification contains at least two explicit statements that "transform" means to change a physical property of the article and/or to make a

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connection between two portions of the article. Please see page 4 at lines 10-11 and the paragraph bridging from page 9 at line 22 onto page 10.

It was also stated in the Office Action that "the claim language is given its broadest reasonable interpretation, and the expansion of the bladder of Deagen [*sic*] to fill the interior space of the helmet is considered to transform the helmet". However, this interpretation is both unreasonable and inconsistent with the specification. Filling the interior space of the *helmet 12* neither changes a physical property of the *helmet 12* nor makes a connection between two parts of the *helmet 12*, i.e., filling the interior space of the *helmet 12* does not transform the *helmet 12*. If it did, then donning the *helmet 12*, i.e., filling the interior space of the *helmet 12* with the wearer's head, would likewise transform the *helmet 12*, which it does not do. Thus, Deagan's *helmet 12* is not transformed by the *bladder 24*, but instead the interior space of the *helmet 12* is merely occupied by the *bladder 24* when the latter is inflated.

It was also stated in the Office Action that "the space within the helmet (i.e. its interior size)...[is] diminished by the inflation of the bladder". However, this allegation is fundamentally erroneous. The space within the *helmet 12* is not changed by the inflation of the *bladder 24*, but instead is merely occupied by the expanded *bladder 24* when the latter is inflated. Perhaps the intention was to allege that the "available" space within the *helmet 12* is diminished by the inflation of the *bladder 24*. This latter statement is accurate, because the expanded *bladder 24* occupies some or all of the interior space of the *helmet 12*. Of course, this fact affirms that the *helmet 12* is not transformed, but instead its *unchanged* interior space is occupied by the inflated *bladder 24*.

It was also alleged in the Office Action that the expansion of the *bladder 24* changes the size of the *helmet 12*. However, the admission that the expansion of the *bladder 24* fills the interior space of the *helmet 12* contradicts this allegation. As explicitly stated in the Office Action, the *bladder 24* is not a part of the *helmet 12*, but instead is a part of the combination alleged to be equivalent to the claimed effect generating mechanism. The expansion of the *bladder 24* changes the size of the *bladder 24* itself, without affecting the size of the *helmet 12*. If the expansion of the *bladder 24* changed the size of the *helmet 12*, then placing the *helmet 12* on the

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wearer's head would likewise change the size of the *helmet 12*, which of course it does not do. Thus, again, Deagan's *helmet 12* is not transformed by the *bladder 24*, but instead the interior space of the *helmet 12* is merely occupied by the *bladder 24* when the latter is inflated. Perhaps a technically similar analogy would be enlightening. Inflating an inner tube inside a bicycle tire does not change the size of the tire; it merely fills the interior space of the tire. The tire's size remains whatever it was, prior to the inflation of the inner tube.

In addition, the further allegation in the Office Action that the claim "does not require the manufacturer's 'size' of the article to be changed, and therefore the decrease of the interior size of the helmet [by the expansion of the *bladder 24*]...fulfills the limitations of the claim" is similarly erroneous. Inflating Deagan's *bladder 24* certainly affects the fit of the *helmet 12* on the wearer's head and, preferably, fills enough of the interior space of the *helmet 12* that the *helmet 12* is forced off the head. However, changing the fit is not the same as changing the intrinsic size of the *helmet 12*. Perhaps another analogy would be enlightening. Wearing thicker or thinner socks certainly affects the fit of a pair of shoes, but does not affect the intrinsic size of the shoes. Similarly, inserting an object into the toe of a shoe would not change the size of the shoe. Instead, it would merely fill some of the interior space of the shoe, thereby affecting the fit of the shoe.

Thus, Deagan fails to anticipate independent Claim 19 or any of the other pending claims, all of which depend from Claim 19. Accordingly, it is respectfully requested that the rejections of Claims 19 and 21-24 be withdrawn.

#### **Claim Rejections Under 35 U.S.C. § 102 over Shaw**

In the Office Action, Claims 19 and 25 were rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 2,681,032 to Shaw ("Shaw" hereinafter). These rejections are traversed on the ground that the cited reference fails to anticipate the rejected claims.

It was alleged in the Office Action that the *resilient member 15* of Shaw's *dampness indicator* is equivalent to the claimed mat. However, Shaw discloses that the *resilient member 15* can be a rubber band (column 1, line 48) and gives no other description. Its being a rubber band is

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consistent with its depiction in the drawings. Thus, the *dampness indicator* of Shaw does not comprise anything that could properly be considered to be equivalent to the claimed mat, which is clearly disclosed in the present Application to be a pad or cushion having the form of a slab and thereby resembling previously known diaper changing mats. It is not necessary to read limitations from the description into the claim in order to arrive at this conclusion. Instead, it is only necessary to interpret the claim language as broadly as reasonable consistent with the specification and consistent with the interpretation that those skilled in the art would reach. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000) and *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). In this case, the recitation that the claimed changing aid comprises a mat cannot reasonably be interpreted to include the rubber band *resilient member 15* of Shaw's *dampness indicator*. A rubber band is not a mat.

It was also alleged in the Office Action that Shaw's *frangible means 18* is equivalent to the claimed effect generating mechanism and that it "transforms a portion of the article by facilitating contraction of the mat 15 to allow for a connection between a first portion, signal 20, and a second portion, opening 21, as shown in figure 4." Nothing in particular in Shaw was identified as corresponding to the recited article adapted to be worn externally on the body of a wearer, between two portions of which a connection is made by the claimed effect generating mechanism. Given that the connection is made between two portions of this article, it appears that the *indicator 20* and the *aperture 21* were alleged to be parts of some unidentified equivalent of the article. However, the *indicator 20* is explicitly disclosed by Shaw to be "formed in the face of the rubber band" (column 2, lines 7-8), *i.e.*, in the face of the *resilient member 15*, which was alleged to be equivalent to the claimed mat. The mat is a part of the claimed changing aid that acts on the article, rather than being a part of the article, and thus the *resilient member 15* cannot be a part of any equivalent of the article on which any equivalent of the changing aid acts. Therefore, the *indicator 20* formed in the face of the *resilient member 15* cannot be a portion of the unidentified article that is "connected" to another portion as alleged.

Additionally, nothing in Shaw makes a connection between the *indicator 20* and the *aperture 21*. Instead, Shaw discloses merely that when the *frangible means 18* becomes wet and releases the *resilient member 15*, the contraction of the *resilient member 15* moves the *indicator 20* into

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registry with the *aperture 21* (column 2, line 24-37). In other words, the *indicator 20* becomes visible through the *aperture 21* when the *resilient member 15* contracts and moves the *indicator 20* into alignment with the *aperture 21*. This movement involves no connection between any two portions of anything. Perhaps another analogy would be useful. If a cat is lifted up from the floor and set on a windowsill, thereby becoming visible through the window, this does not mean that a connection has been made between the cat and the window. It means merely that the cat has been moved to a location where it is visible through the window.

It was also alleged in the Office Action that Shaw's "indication of wetness of the diaper assists in the removal process of the article." However, this interpretation of the claim term "assist" is inconsistent with the usage of this term in the claim language, itself. In Claim 19, it is explicitly recited that the effect generating mechanism transforms the portion of the article during the application or the removal of the article to thereby assist in the application or the removal. Shaw's *dampness indicator* operates while the *diaper 23* is being worn. It does nothing during the application or the removal of the *diaper 23*. Also, the effect generating mechanism performs the transformation and thereby assists, i.e., it assists by performing the transformation. Shaw's *dampness indicator* does not perform a transformation and therefore certainly does not assist by performing one.

Furthermore, this interpretation of the term "assist" is unreasonable in light of the specification and its application would improperly vitiate the term and the claim. Shaw's *dampness indicator* does nothing to assist in the application or removal of the *diaper 23*. Instead, it is merely "an extremely simplified device for visibly indicating a condition of dampness" of a diaper (column 1, lines 2-4). It no more "assists" in the application or the removal of the *diaper 23* than does a light bulb in the room or a diaper pail standing ready to receive the soiled diaper. If everything present "assists" somehow, then the claim language would have no meaning.

Thus, Shaw fails to anticipate independent Claim 19 or Claim 25, which depends from Claim 19. Accordingly, it is respectfully requested that the rejections of Claims 19 and 25 be withdrawn.

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**Summary of this Reply**

Claims 4 and 20 have been cancelled, leaving Claims 19 and 21-25 pending.

The rejections of claims have been argued. It is averred that the basic requirement for an anticipation rejection has not been met with respect to any of the rejected claims.

The timely allowance of the pending claims is respectfully requested.

Respectfully submitted,  
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